

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2127 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No
  2. To be referred to the Reporter or not? No
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? No :

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NEW INDIA ASSURANCE CO.LTD.

Versus

SAVITABEN GOVINDBHAI PATEL  
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Appearance:

MR RAJNI H MEHTA for Petitioner  
MR PM THAKKAR for Respondent No. 1  
NOTICE SERVED for Respondent No. 2, 3, 4, 5  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/04/2000

ORAL JUDGEMENT

1. The New India Assurance Co., opposite Party No.3,  
in the Motor Accident Claims Tribunal, has filed this  
Appeal challenging the Award of the Tribunal at Rajkot

rendered on 13.6.1983.

2. List was revised four times, but none appeared for the respondent No.1. Respondents No.2 to 5 are served. None appeared on their behalf nor any Counsel appeared on their behalf. As such Shri A.R.Mehta, learned Counsel representing Shri R.H.Mehta has been heard and the record and the impugned judgment have been examined.

3. Brief facts giving rise to this Appeal are as under :

On 16.4.1980 at about 2.00 O'clock in the night Truck No.GTX 5337 driven by the first opponent and owned by the second opponent and insured with third opponent met with an accident. The truck was loaded with Cumin (JIRU). The deceased and other persons were owners of agriculture produce and were going for selling their produce in the market. The deceased was also sitting in the truck along with his goods to be transported. In the accident the deceased Govindbhai Dudhabhai sustained injury and expired. Other occupants of the truck also sustained injuries. Accordingly the claim petition was filed in the Tribunal.

4. The petition was resisted on numerous grounds which need not be reproduced. Learned Counsel for the Appellant has contended that the Insurance Co. is not at all liable to pay any compensation and the case is covered by the Apex Court's pronouncement in Smt. Mallawwa, etc. v/s. The Oriental Insurance Co.Ltd. & ors. reported in JT 1998 (8) SC 217. The contention has substance for the following reasons :

5. The Tribunal has wrongly observed that there was no breach of conditions of the policy. Ex.24 was not properly considered and appreciated by the Tribunal. It inter-alia provides that the policy does not cover use for conveyance of passenger for hire or reward. This is clause No.3 in the Policy which has been printed in rubber stamp. Even according to the Judgment of the Tribunal not only the deceased, but other passengers were being carried in the truck along with their goods. Evidently it was a commercial vehicle in which the passengers were carried. Observations of the Tribunal that the passengers were not carried for hire or reward seems to be contrary to the evidence on record and is based on imagination. Obviously, there was breach of condition No.3 of the rubber stamp condition placed on the Insurance Policy. If it was a goods vehicle and

passengers were carried casually or on stray occasion along with their goods, the nature of carriage of goods vehicle cannot be changed and it cannot be said that the vehicle was used generally for carriage of passengers. It is at this stage that the Apex Court's verdict in Smt. Mallawwa's case (Supra) can safely be applied where the Apex Court held that only if the vehicle is used in a systematic way for carriage of passengers that it can be said to be a vehicle in which passengers are carried for hire or reward. It would not be appropriate to consider the goods vehicle as passenger vehicle on the basis of a single use or use on some stray occasion at that vehicle for carrying passengers for hire or reward. The position is also not changed if the deceased was carrying only his agricultural goods for being sold in open market.

6. In the result, I find that in the first place there was breach of condition No.3 placed on the Insurance Policy in the nature of rubber stamp condition and secondly in view of the Apex Court's verdict in Smt. Mallawwa's case (supra) the Insurance Company, the appellant, was wrongly fastened with liability jointly as well as severally with owner and the driver for payment of compensation.

7. In the result, the Appeal succeeds and is allowed. The impugned Award as against the appellant only is hereby quashed. The amount of compensation, interest and cost deposited by the appellant which remains with the Tribunal or which has not been disbursed to the claimant shall be refunded to the appellant on proper application. No order as to costs.

sd/-

Date : April 04, 2000 ( D. C. Srivastava, J. )

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